

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU

&

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

TRC.No. 443 of 2002

TA.566/2001 OF THE KERALA SALES TAX APPELLATE TRIBUNAL,
THIRUVANANTHAPURAM, DATED 22ND MAY, 2002

PETITIONER: APPELLANT:ASSESEE

P.SHAJAHAN, EVERGREEN EXPORT
ENTERPRISES, KOLLAM.

BY ADV. SRIANCHAL C.VIJAYAN
SRI.P.K.RAVI KRISHNAN

RESPONDENT: RESPONDENT: REVENUE:

STATE OF KERALA, REPRESENTED BY ITS
FINANCE SECRETARY SECRETARIAT, TRIVANDRUM.

BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 23/07/2007, THE COURT
ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

Tax Revision Case NO. 443 OF 2007

Dated this the 23rd July, 2007

ORDER

H.L.DATTU, C.J.

This revision petition is filed by an assessee registered under the provisions of the Kerala General Sales Tax Act, 1963 ('the Act' for short). The assessment year in question is 1996-97.

2. The assessee calls in question the orders passed by the Kerala Sales Tax Appellate Tribunal, Thiruvananthapuram in T.A.No.566 of 2001, dated 22nd May, 2002.

3. The assessee has framed the following question of law for our consideration and decision. It is as under:

“Whether the Tribunal has went wrong in holding that, sec.17(4) assessment does not apply in the case as the petitioner failed to comply with the statutory requirements, where the Act does not prescribe any statutory obligations when the return is filed showing 'nil' turnover?”

4. The assessee is a dealer having occasional business in purchase and sale of cashew rejections. For the assessment year 1996-97, the assessee had filed 'nil' return before the assessing authority.

5. The assessing authority had issued several notices to the assessee to produce books of accounts in support of the claim made by him in the return filed. Since the assessee did not produce the

books of accounts maintained by him in the regular course of business, the assessing authority has proceeded to complete the best judgment assessment fixing taxable turnover at Rs.6,31,000/-.

6. The assessee had carried the matter in appeal before the First Appellate Authority. The First Appellate Authority has confirmed the orders passed by the assessing authority.

7. Aggrieved by the orders so passed by the First Appellate Authority and the assessing authority, the assessee had carried the matter by way of second appeal before the Tribunal in T.A.No.566 of 2001.

8. Before the Tribunal, the primary contention of the assessee's learned counsel was that it was obligatory on the part of the assessing authority to have completed the assessment for the assessment year 1996-97 under Section 17(4) of the Act, when the assessee had filed his 'nil' return. The Tribunal has rejected that contention solely on the ground that if the assessee wants an assessment to be completed under Section 17(4) of the Act, the assessee is expected to comply with the provisions of Rule 18A of the Kerala General Sales Tax Rules, 1963. However, being of the opinion that the taxable turnover fixed by the assessing authority is on the higher side, the Tribunal has reduced the same by 50%. Aggrieved by the orders so passed by the Tribunal, the assessee is

before us in this Tax Revision Case.

9. The learned counsel appearing for the assessee would vehemently contends before us that when the assessee had filed 'nil' return before the assessing authority, the assessing authority should have accepted the same and should not have passed the best judgment assessment. Secondly, the learned counsel would contend that since the taxable turnover of the assessee was nil, the Tribunal could not have insisted upon the assessee to produce the statements and other documents required under Rule 18A of the Rules for the purpose of completing the assessment under Section 17(4) of the Act. None of the submissions canvassed by the learned counsel appearing for the appellant/assessee, in our opinion, has any merit.

10. In the instant case, the assessee is a dealer registered under the Act. For the previous assessment year, that is, for the assessment year 1995-96, the assessee had filed his return before the assessing authority. Accepting the return filed by the assessee, the assessing authority had completed the assessment. For the subsequent year, namely, 1996-97, the assessee had filed 'nil' return before the assessing authority. The assessing authority had given an opportunity of hearing to the assessee and an opportunity to produce the books of accounts and since the same has not been complied with by the assessee, the assessing authority had completed the best

judgment assessment. While making the best judgment assessment there would be some guess work and that guess work the assessing authority has done in the instant case, keeping in view the taxable turnover of the assessee declared for the previous year.

11. The Appellate Authority has confirmed the findings and conclusions reached by the assessing authority.

12. Before the Tribunal, the contention of the assessee was that the assessee having filed his 'nil' return, the assessing authority should have completed the assessment under Section 17(4) of the Act.

13. For the relevant period, Section 17(4) of the Act reads as under:

“Notwithstanding anything to the contrary contained in Sub-sections (3) and (4A) the assessing authority shall accept the return for any two years out of the three consecutive years beginning with the year 1977-78 submitted by any dealer whose total turnover as assessed under this Act according to the latest completed assessment and the total turnover specified in the return submitted by the assessee for the year for which the assessment is to be made accepting the return, does not exceed five lakhs rupees and assess the dealer on the basis of such return:

Provided that the provisions of this sub-section shall not apply if the tax due as specified in the return is less than the tax assessed according to the latest completed assessment by more than twenty-five per cent.

Provided further that the provisions of this sub-section shall not apply in the case of a dealer who has

been punished or on whom a penalty has been imposed or from whom a sum of money has been accepted under S.47 for evasion of tax for the year for which the return has been submitted.”

14. Under Rule 18A of the Rules, a dealer entitled to assessment under Section 17(4) or Section 17(4A) claiming exemption etc. from tax should furnish certain documents. The sub-rule envisages that if a dealer entitled to assessment under Section 17(4) of the Act, he is required to produce the documents envisaged under Rule 18A of the Rules.

15. In the instant case, the assessee though had filed 'nil' return before the assessing authority claiming to be assessed under Section 17(4) of the Act, did not comply with the statutory requirements of the production of certain documents as required under Rule 18A of the Rules. Keeping in view the provisions of Section 17(4) of the Act read with Rule 18A of the Rules, the Tribunal, in our opinion, has rightly rejected the contentions canvassed by the learned counsel for the assessee.

16. The Tribunal, being of the opinion that the taxable turnover fixed by the assessing authority is on the higher side, has modified the orders of assessment. The assessee should thank his stars for the benefit that is given to him by the Tribunal.

17. In that view of the matter, we do not find any merit in this Tax Revision Case. Accordingly, the same requires to be rejected

and it is rejected. The question of law framed by the assessee is answered against the assessee and in favour of the Revenue.

18. In view of the order passed in the Tax Revision Case, the relief sought for in C.M.P.No.6850 of 2002 need not be considered by this Court. Accordingly, the said C.M.P is also rejected.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

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**H.L.DATTU, C.J. &
K.T.SANKARAN, J.**

T.R.C.NO. 443 OF 2002

ORDER

23rd July, 2007
